IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION (LD) NO.1695 OF 2005

Mrs. Rohini Suryakant Parab & Ors. ...Petitioners.
Vs.
The State of Maharashtra & Ors. ...Respondents.
....
Ms.Usha Srivastava i/b. Consulta Juris for the Petitioners.
Mr. A. A. Sayyed, AGP for Respondent Nos.1 to 3.
.....

CORAM : DALVEER BHANDARI, C.J. &
DR.D.Y.CHANDRACHUD, J.

August 26, 2005.

ORAL ORDER (PER DR. D.Y. CHANDRACHUD, J.):

An application was filed by the Fourth Respondent, which is an Urban Co-operative Bank before the Assistant Registrar of Co-operative Societies, under Section 101 of the Maharashtra Co-operative Societies' Act, 1960, for the issuance of a recovery certificate. This resulted in the issuance of a recovery certificate on 28th December 2004 in the amount of Rs.4,18,360/- together with future interest on the principal sum. The Petitioner filed a Revision Application before the Divisional Joint Registrar of Co-operative Societies under Section 154 of the Act. Counsel appearing on behalf of the Petitioner stated that the Revision Application has not been accepted on the ground that the

mandatory condition of a deposit of 50% of the decretal dues under Section 154(2A) has not been complied with. In these proceedings under Article 226 of the Constitution, the constitutional validity of the amended provisions of Section 154(2A) has been challenged.

2. The requirement of a pre-deposit of 50% in revision is intended to safeguard the interests of the institution whose claim has already been adjudicated upon by the Assistant Registrar in proceedings under Section 101. There is nothing arbitrary in the provision. The provisions of Section 217 of the Bombay Municipal Corporation Act, 1888 which require a deposit where an appeal is filed before the Small Causes Court against rateable value or a tax fixed or charged were upheld in a decision of this Court rendered by Hon'ble Mr. Justice S. P. Bharucha (as his Lordship then was) in **Ellora Construction vs. Municipal Corporation of Greater Bombai,** (AIR 1980 Bom.162. This was cited with approval in the judgment of the Supreme Court in **Shyam Kishore vs. Municipal Corporation, Delhi**. (1993) 1 SCC 22. The Supreme Court referred to the earlier decisions in **Anant Mills Co.Ltd. vs. State of Gujarat** (1975) 3 SCR 220 and in **Vijay Prakash vs. Collector of**

Customs (1988) 4 SCC 402. In the latter decision, while upholding the provisions of Section 129B of the Customs Act, 1962, the Supreme Court held thus:

> ""Right to appeal is neither an absolute right nor an ingredient of natural justice the principles of which must be followed in all judicial and quasi-judicial adjudications. The right to appeal is a statutory right and it can be circumscribed by the conditions in the grant."

There is hence no merit in the challenge.

3. The Petitioner does have an efficacious alternate remedy. This petition is filed only with a view to obviate a compliance with the requirement of depositing 50% of the dues, as is required by Section 154(2A). We do not find any merit in the petition. The petition is accordingly dismissed.

CHIEF JUSTICE.

DR. D. Y. CHANDRACHUD, J.